THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.4280 OF 2005

DATED 04.7.2006.

BETWEEN:

Smt.K.Padma Reddy .... Petitioner.

And

Govt., of A.P.,
Dept. of Municipal Admn., & Urban Development
and others.

... Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.4280 OF 2005

ORDER:

1. Heard the counsel.

2. Sri Posani Venkateshwarlu, learned counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition, the stand taken in the counter affidavit and also the contents of the reply affidavit and would maintain that on facts the principles of natural justice had been violated since the report was not furnished to the petitioner and proper enquiry was not conducted. The learned counsel also would maintain that the subsequent compliance, if any, cannot be made basis for making the impugned order. In any view of the matter, proper procedure had not been followed and the same is vitiated. The learned counsel also placed strong reliance on ***D.SATHI REDDY V COMMISSIONER, PANCHAYAT RAJ A.P., HYDERABAD AND OTHERS***[1], ***THE NARAYANAVALASA GRAM PANCHAYAT, NARSANNAPETA TALUK, SRIKAKULAM DISTRICT Vs THE GOVERNMENT OF A.P.,***[2] and ***BHAKTAVATHASALA SUKUMAR vs HINDUSTAN PETROLEUM CORPORATION LIMITED, VISHANAKAPATNAM AND OTEHRS***[3]***.***

3. On the contrary, Sri Polishetty Radhakrishna would contend that

this is a case of large-scale misappropriation of public fund for personal gain. The very fact that on 6.12.2004, the petitioner had submitted a detailed explanation relating to several factual aspects of the matter would go to show that the petitioner had been given due opportunity and subsequent thereto, the impugned order was made. Hence, there is absolutely no illegality.

4. Heard the counsel.

5. The writ petition is filed for a writ of mandamus declaring the memo in ROC No.22360/2004/E3 dated 28.12.2004 issued by the second respondent and consequential notice in ROC No.G2/665/04 dated 16.2.2005 issued by the third respondent, as illegal, contrary to law, against the principles of natural justice, and to pass suitable orders.

6. The said proceedings referred to supra, dated 28.12.2004 and 16.2.2005, read as hereunder:

> " It has been brought to the notice of Commissioner & Director of Municipal Administration by the Regional Director-cum-Appellate Commissioner of Municipal Administration, Hyderabad after verifying Municipal office records that as against the guidelines of Reserve Bank of India and Minister of Urban Affairs and Employment, Government of India, New Delhi the SJSRY Scheme funds have been deposited in Bellampally Co-operative Urban Bank, Bellampally. The CEO, Bellampally Co-operative Bank Ltd., has reported in his letter Rc.No.3/2003/UB/909, dt.5.6.2003 to the Municipal Commissioner, Bellampally that the subsidy amount of Rs.1.00 lakh released to Sri Vani Mahila DWCUA Sangam-IV has been misutilised at their end without establishing any unit and not utilized property. Further, out of 23 DWCUA groups identified in Bellampally Municipality 15 DWCUA groups are only in the name of Sri Vani DWCUA group in different numbers and an amount of Rs.31.00 lakhs was allotted as subsidy. Further, the Revolving Fund to a tune of Rs.14.75 lakhs was misused by the Sri Vani Mahila Podupu Sangam, Bellampally under the guise of Sri Vani Community Development Society, Bellampally.
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> In view of the above, the Municipal Commissioner, Bellampaly is hereby instructed to take necessary steps for

the recovery of above said misutilised amount i.e., Rs.1.00 lakh, 31.00 lakh and 14.75 lakhs from Vani Mahila Podupu Sangam, Bellampally. The Municipal Commissioner is further instructed to file criminal case against the president Sri Vani Mahila Podupu Sangam besides the recovery of amount."

" The Commissioner and Director of Municipal Administration, A.P., Hyderabad instructed to take necessary steps for the recovery of the amount of Respondents.1.00 lakh towards subsidy released to Sri Vani Mahila Podupu Sangam-IV, Respondents.31.00 lakhs released DWCUA subsidy amount to Sri Vani Mahila Podupu Sangam, and an amount of Respondents.14.75 lakhs released towards revolving fund to Sri Vani Mahila Podupu Sangam, vide memo reference cited.

I therefore request you to refund the above said amount within 15 days, failing which the criminal case will be filed against you."

7. It is stated in the affidavit filed in support of the writ petition that the petitioner is President of Sri Vani Community Development Society, Bellampally and Sri Vani Mahila Podupu Sangam and she is also the President of Community Development Society. It is further stated that as per the policy of the Central Government and the State Government for promotion of the women empowerment especially in urban areas, number of Self Help Groups (SHG) and Neighborhood Groups (NHG) were formed. The SHGs are part of NHGs. It is also further stated that the Central Government announced two schemes namely Swarna Jayanthi Shahari Rojgar Yojana and National Slum Development Programme and under the said schemes, the Urban Self-employment Programmes and the Urban Wage Employment Programmes would be taken up for providing self-employment and employment to the women residing in urban areas. As per the procedure and the guidelines being followed, whatever benefit to be advanced to the needy and deserved women, the same would be given directly to the Self Help Groups and connected DWCUAs

through the Commissioner of Municipality concerned. The role of the Community Development Centers (CDS) is to identify the areas and the works for providing self-employment and employment to the needy women and to advise the authorities concerned for advancing aid to them. The Self Help Groups as well as Neighbor Hood Groups shall maintain independent accounts in banks. The aid shall be released through banks to be paid to the groups. The CDS is nothing to do with the transactions of grant-in-aid. At best the CDS shall identify the groups before the bank at the time of drawl of aid from the bank. The role of the CDS as apex body of the groups is to coordinate in between beneficiary groups and the municipal authorities and other authorities.

8. It is further stated that within the jurisdiction of Bellampally Municipality there are number of SHGs and also NHGs and certain groups formed prior to 1998, i.e., before the said schemes were introduced. Since, 1998, the Central Government as well as State Government had been giving grant-in-aid to the said groups depending on their eligibility and need. As far as Bellempally Municipality is concerned, there is no allegation that the grant-in-aid given to the groups had not been utilized properly and there is no allegation that the grant-in-aid given had not reached the members of the groups. It is stated that as President of CDS, Bellampally, the petitioner made all her efforts for upliftment of women and she had not given any scope for criticism and the CDS is not dealing with the money transaction and it is only identifying, coordinating, promoting and recommending agency. It is further stated that the third respondent-Commissioner issued notice dated 01.12.2004 intimating her to appear before the Regional Director of Municipal Administration on 6.12.2004 and it was further directed that Regional Director is coming to enquire into the allegations against the CDS President. The said order does not specify the nature of allegations. Further as per the orders, the petitioner appeared before him on 6.12.2004 and she

was not apprised of any allegation or for what purpose he came for enquiry, but he simply asked her to give statement regarding functioning of the CDS and functioning of relevant schemes and accordingly, she submitted a letter dated 6.12.2004 giving particulars of the groups which are functioning within Bellampally Municipality and its activities. It is also stated that surprisingly the second respondent-Director of Municipal Administration issued Memo dated 28.12.2004 directing the third respondent-Municipal Commissioner to take necessary steps for recovery of amount of Rs.1,00,000/- from Vani Mahila Podupu Sangam and further directing to file criminal case against the President of the Sangam. It is further stated that the basis for issuing such memo is the complaint given by one Sri Dasari Narsaiah, Ex.MLA and others, and the letter dated 13.12.2004 of the Regional Director, Hyderabad. She came to know that pursuant to the said memo, third respondent-Commissioner, Bellampally Municipality, submitted letter dated 01.2.2005 to the second respondent explaining that Sri Vani Community Development Society is no way concerned with the distribution of the grant-in-aid. It is further stated that she received a notice dated 16.2.2005 issued by the third respondent and in the said notice she was asked to pay the amount within 15 days. It is stated that the memo dated 28.12.2004 and the consequential notice dated 16.2.2005 are contrary to law, arbitrary and against the principles of natural justice. Certain other factual details also had been narrated. It is further stated that before issuing memo dated 28.12.2004, she was not given any notice or she was not furnished any copy of the complaint, since this was the sole basis for issuing such memo and no member of any group was enquired. It is further stated that the second respondent cannot direct the third respondent to recover the said amount on the basis of simple unfounded politically motivated allegations and when an authority relied on any information

or report of the subordinate officer for taking action, without furnishing the copy of such report and without calling for objections from the party to be effected, no order would be passed. If any such order is passed, the same is contrary to law and against the principles of natural justice. Certain other allegations had been made attributing mala fides to said D.Narsaiah and others and also certain factual details relating to the changed political situation also had been narrated. It was further stated that the petitioner made a representation to the first respondent on 1.3.2005 requesting to intervene in the matter and to stay the operation of the impugned orders, but however, the first respondent had not passed any orders. In the said circumstances, the writ petition is filed.

9. The third respondent filed a counter affidavit denying the allegations. It was stated in the counter affidavit that vide Government Memo No.11805/UBS/2002, Municipal Administration, Dated 18.12.2004, the government had issued orders canceling the community based organizations, since the term of the same in all municipalities and corporations had already been expired. It was also stated that the petitioner had opened a personal Account No.20154 in the Sri Saraswathi Grameena Bank, Billampalli and she had opened and maintained single hand account under Community Development Society and there is no evidence, nor any record about making payments to the said groups. It was also further stated that the entire transaction being maintained by the CDS only under SJSRY and NSDP grant-in-aid released by the government. There is no coordination between beneficiary groups. A total of 14 complaints submitted to the Hon'ble Chief Minister during Rajiv Nagara Bata programme on 19.2.2005, had been referred to and almost all the complaints had alleged that Smt.Padma Reddy had deceived them by involving their names without their knowledge and availed loan amounts and revolving funds which were released in their names. It

was further stated that she had not given a single rupee to any of them or any group. It was further stated that as per memo Roc.No.22360/2004/E3 dated 28.12.2004, a letter had been submitted to the Commissioner and Director of Municipal Administration, A.P., Hyderabad on 01.2.2005 about the recovery of amount of Rs.1.00 lac + 31.00 lacs + 14.75 lacs, as the CDS is responsible to watch all the activities and progress of units formed or not, and CDS also is acting as herself a President of Sri Vani Mahila Sangam, Bellampalli. It was further stated that Commissioner and Director of Municipal Administration, A.P., Hyderabad, had issued memo dated 28.12.2004 after elaborate enquiry by the Regional Director-cum-Appellate Commisioner, Municipal administration, Hyderabad, and basing on the enquiry report and after perusing all the records, found that CDS had misused the grant-in-aid, and hence, in accordance with the instructions, notice Roc.No.G2/665/04 dated 16.2.2005 had been issued to the petitioner to refund the said amount within 15 days. It was further stated that it is a case of misappropriation of public fund and hence, proper enquiry was conducted and ultimately impugned orders were made.

10. A reply affidavit in detail had been filed explaining the procedure to be followed and several factual details also had been narrated. It is also specifically stated that a total of 14 complaints submitted to the Hon'ble the Chief Minister during Rajiv Nagarabata dated 19.2.2005 and all the complainants had alleged that the petitioner had deceived them in involving their names without their knowledge and availed loan amounts and revolving funds, which were released in their names and they were not given a single rupee, is utterly false and the other allegations relating to impugned orders also had been specifically denied. It is stated that it is the responsibility of the Commissioner to watch all the activities and programmes of the units formed and it is not

the responsibility of the CDS. In reply to the averment that the Commissioner had issued impugned memo dated 28.12.2004 after conducting elaborate enquiry by the Regional Joint Director and basing on such enquiry report which finds that the CDS had misused the grant-in-aid sanctioned by the government, it is stated that neither the petitioner nor the CDS had been issued with copy of the enquiry report nor any remarks were called for before issuing the impugned proceedings and that neither the petitioner nor the CDS had been given any show-cause notice before issuing any proceedings. Thus, the second respondent-Commissioner had not followed the proper procedure and without following the proper procedure, the second respondent cannot come to any conclusion which casts stigma to the petitioner, hence, the impugned proceedings are in violation of principles of natural justice. Mis-utilization or misappropriate of public fund also had been specifically denied. These are the pleadings of the parties.

11. As can be seen from the material available on record, no doubt, it appears that the petitioner had submitted some representation with factual details dated 6.12.2004 to the Regional Director-cum-Appellate Commissioner, Municipal Administration. Strong reliance was placed on this explanation or representation, in whatever name the same can be styled, by the counsel representing the respondent. Yet another circumstance, on which strong reliance was placed by the counsel for the respondent, is the maintenance of personal account and the number which had been specifically furnished in relation thereto. The allegations made and the counter allegations and also the further allegations in the reply affidavit already had been referred to supra. This Court is not inclined to express any opinion relating to the merits and demerits of the matter, since serious allegations are made as against the petitioner that on the strength of some representation made by Narsaiah and some others, which had been referred to in the

impugned orders and certain of the complaints, which had not been referred to at all, which said to have been made to the Hon'ble the Chief Minister, the action had been taken. It is not in serious controversy that the enquiry report was not issued to the petitioner and no record is forthcoming before this Court relating to the recording of the submissions of these complainants, the aggrieved parties, since it is stated that such aggrieved parties made complaints that no fund had been received by them and they were in fact, deceived. What was the nature of enquiry conducted in relation there to, the clear picture is not forthcoming before this Court.

12. Be that as it may, the fact remains is that the whole material, on the basis of which an enquiry is said to have been proceeded with, had not been furnished to the petitioner. When a adverse order of one, as in the present case, to be passed reasonable opportunity to be given to the petitioner to meet the allegations to explain her stand in the backdrop of the material which was ultimately to be relied upon by the enquiry officer. In that view of the matter, this Court is thoroughly satisfied that in conducting the enquiry, the principles of natural justice had not been followed. This view was expressed by this Court in ***D.SATHI REDDY's case, THE NARAYANAVALASA GRAM PANCHAYAT's case*** and ***BHAKTAVATHASALA SUKUMAR's case (cited supra)***. In view of the same, this Court is of the considered opinion that the impugned orders to be set aside and opportunity to be given to the respondents to furnish all the material and conduct enquiry afresh, in accordance with law.

13. With the above directions, the writ petition is allowed to the extent indicated above. No order as to costs.

14. It is needless to say that the explanation or the stand taken by the petitioner in the representation already submitted dated 6.12.2004, also to be taken into consideration in conducting further enquiry.

04.7.2006.

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[1] 1999(5) ALD 681 (DB)

[2] 1977 AWR 129

[3] 2003(4) ALD 25